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13                   **UNITED STATES DISTRICT COURT**  
14                   **DISTRICT OF NEVADA**

16 RAYMOND GARCIA, *et al.*,  
17                   Plaintiffs,  
18 vs.  
19 SERVICE EMPLOYEES  
20 INTERNATIONAL UNION, *et al.*,  
21                   Defendants.

CASE NO.: 2:17-cv-01340-APG-NJK  
PROTECTIVE ORDER

22 CHERIE MANCINI, *et al.*,  
23 vs.  
24 SERVICE EMPLOYEES  
25 INTERNATIONAL UNION, *et al.*,  
26                   Defendants.

CASE NO.: 2:17-cv-02137-APG-NJK

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## **PROTECTIVE ORDER**

The Court enters the following protective order

to govern the designation and production of confidential information or documents so designated by Plaintiffs and Defendants.

## **1. Purposes and Limitations**

Discovery activity in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties have stipulated to and petitioned the Court to enter the following Protective Order.

The parties acknowledge that this Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties further acknowledge, as set forth below, that this Protective Order creates no entitlement to file confidential information under seal. Local Rule IA 10-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the Court to file material under seal.

## 2. Definitions

2.1. Party: Any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

**2.2. Disclosure or Discovery Material:** All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3. “Confidential” Information or Items: Information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under Federal Rule of Civil Procedure 26(c).

1           2.4. "Highly Confidential - Attorneys' Eyes Only" Information or Items: Extremely  
2 sensitive "Confidential Information or Items" whose disclosure to another Party or nonparty  
3 would create a substantial risk of serious injury that could not be avoided by less restrictive  
4 means.

5           2.5. Receiving Party: A Party that receives Disclosure or Discovery Material from a  
6 Producing Party.

7           2.6. Producing Party: A Party or nonparty that produces Disclosure or Discovery  
8 Material in this action.

9           2.7. Designating Party: A Party or nonparty that designates information or items that it  
10 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential -  
11 Attorneys' Eyes Only."

12           2.8. Protected Material: Any Disclosure or Discovery Material that is designated as  
13 "Confidential" or as "Highly Confidential - Attorneys' Eyes Only."

14           2.9. Outside Counsel: Attorneys who are not employees of a Party but who are retained  
15 to represent or advise a Party in this action.

16           2.10. House Counsel: Attorneys who are employees of a Party.

17           2.11. Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
18 support staffs).

19           2.12. Expert: A person with specialized knowledge or experience in a matter pertinent to  
20 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as  
21 a consultant in this action and who is not a past or a current employee of a Party or of a  
22 competitor of a Party and who, at the time of retention, is not anticipated to become an  
23 employee of a Party or a competitor of a Party. This definition includes a professional jury or  
24 trial consultant retained in connection with this litigation.

25           2.13. Professional Vendors: Persons or entities that provide litigation support services  
26 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
27 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

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1       **3. Scope**

2              The protections conferred by this Protective Order cover not only Protected Material (as  
3 defined above), but also any information copied or extracted therefrom, as well as all copies,  
4 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
5 parties or counsel to or in Court or in other settings that might reveal Protected Material. The  
6 protections conferred by this Stipulation and Order do not waive the right of Plaintiffs or  
7 Defendants to challenge the propriety of any discovery. This Protective Order does not decide  
8 the validity of any such challenge.

9       **4. Duration**

10          Even after the termination of this litigation, the confidentiality obligations imposed by  
11 this Protective Order shall remain in effect until a Designating Party agrees otherwise in writing  
12 or a Court order otherwise directs.

13       **5. Designating Protected Material**

14          5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
15 nonparty that designates information or items for protection under this Order must take care to  
16 limit any such designation to specific material that qualifies under the appropriate standards. A  
17 Designating Party must take care to designate for protection only those parts of material,  
18 documents, items, or oral or written communications that qualify—so that other portions of the  
19 material, documents, items, or communications for which protection is not warranted are not  
20 swept unjustifiably within the ambit of this Order.

21          If it comes to a Party's or a nonparty's attention that information or items that it  
22 designated for protection do not qualify for protection at all, or do not qualify for the level of  
23 protection initially asserted, that Party or nonparty must promptly notify all other parties that it  
24 is withdrawing the mistaken designation.

25          5.2. Manner and Timing of Designations. Except as otherwise provided in this  
26 Protective Order, or as otherwise stipulated or ordered, material that qualifies for protection  
27 under this Protective Order must be clearly so designated before the material is disclosed or  
28 produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” on each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party, to the extent practicable, also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

(b) For testimony given in deposition or in other pretrial or trial proceedings, that the Party or nonparty offering or sponsoring the testimony identifies on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specifies any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or nonparty that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

5.3. Inadvertent Failures to Designate and Inadvertent Disclosures. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” or “Highly

1 Confidential - Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's  
2 right to secure protection under this Order for such material. If material is appropriately  
3 designated as "Confidential" or "Highly Confidential - Attorneys' Eyes Only" after the material  
4 was initially produced, the Receiving Party, on timely notification of the designation, must  
5 make reasonable efforts to assure that the material is treated in accordance with the provisions  
6 of this Order. The inadvertent disclosure of any material that is subject to a legitimate claim that  
7 the material should have been withheld from disclosure as privileged or subject to the attorney  
8 work product doctrine shall not constitute a waiver of the privilege or other protection for that  
9 material or for the subject matter of the inadvertently disclosed material if the Producing Party,  
10 upon becoming aware of the disclosure, promptly requests its return. The Receiving Party of  
11 any material that appears to that party to be subject to a legitimate claim that the material should  
12 have been withheld from disclosure as privileged or subject to the attorney work product  
13 doctrine, shall promptly notify the Producing Party.

14 **6. Challenging Confidentiality Designations**

15 6.1. Timing of Challenges. Unless a prompt challenge to a Designating Party's  
16 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
17 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
18 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
19 promptly after the original designation is disclosed.

20 6.2. Meet and Confer.

21 A Party that elects to initiate a challenge to a Designating Party's confidentiality  
22 designation must do so in good faith and must begin the process by conferring with counsel for  
23 the Designating Party. In conferring, the challenging Party must explain the basis for its belief  
24 that the confidentiality designation was not proper and must give the Designating Party an  
25 opportunity to review the designated material, to reconsider the circumstances, and, if no  
26 change in designation is offered, to explain the basis for the chosen designation. A challenging  
27 Party may proceed to challenge a Designating Party's confidentiality designation only if it has  
28 engaged in a meet and confer process first.

1           The burden of persuasion in any such challenge proceeding shall be on the Designating  
See concurrent  
order for added  
Paragraph 6.3  
Party. Until the Court rules on the challenge, all parties shall continue to afford the material in  
question the level of protection to which it is entitled under the Producing Party's designation.

4           **7. Access to Protected Materials**

5           7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
6 produced by another Party or by a non-party in connection with this case only for prosecuting,  
7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
8 to the categories of persons and under the conditions described in this Protective Order. When  
9 the litigation has been terminated, a Receiving Party must comply with the provisions of section  
10 11, below (FINAL DISPOSITION).

11           Protected Material must be stored and maintained by a Receiving Party at a location and  
12 in a secure manner that ensures that access is limited to the persons authorized under this  
13 Protective Order.

14           7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
15 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose  
16 any information or item designated CONFIDENTIAL only to:

17           (a) the Receiving Party’s Outside Counsel of record in this action, as well as employees  
18 of said Counsel to whom it is reasonably necessary to disclose the information for this  
19 litigation, who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

20           (b) the Receiving Party and officers, directors, and employees (including House  
21 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation  
22 and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

23           (c) Experts (as defined in this Protective Order) of the Receiving Party to whom  
24 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be  
25 Bound by Protective Order” (Exhibit A);

26           (d) the Court and its personnel, and court reporters and their staffs;

27           (e) professional vendors to whom disclosure is reasonably necessary for this litigation  
28 and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

1                         (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
2 necessary and who have been informed of the requirements of the Protective Order. Pages of  
3 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must  
4 be separately bound by the court reporter and may not be disclosed to anyone except as  
5 permitted under this Protective Order;

6                         (g) the author of the document or the original source of the information;

7                         (h) officers, directors, and employees of the Designating Party; and

8                         (i) mediators and other ADR neutrals in this case.

9                         7.3. Disclosure of “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”

10                         Information or Items. Unless otherwise ordered by the Court or permitted in writing by the  
11 Designating Party, a Receiving Party may disclose any information or item designated  
12 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” only to:

13                         (a) the Receiving Party’s Outside Counsel and House Counsel, as well as employees of  
14 said Counsel to whom it is reasonably necessary to disclose the information for this litigation,  
15 who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

16                         (b) Experts (as defined in this Protective Order) to whom disclosure is reasonably  
17 necessary for this litigation, and who have signed the “Agreement to Be Bound by Protective  
18 Order” (Exhibit A);

19                         (c) the Court and its personnel, and court reporters and their staffs;

20                         (d) professional vendors to whom disclosure is reasonably necessary for this litigation  
21 and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

22                         (e) the author of the document or the original source of the information;

23                         (f) officers, directors, and employees of the Designating Party; and

24                         (g) mediators and other ADR neutrals in this case.

25                         8 Protected Material Subpoenaed or Ordered Produced in Other Litigation

26                         If a Receiving Party is served with a subpoena or an order issued in other litigation that  
27 would compel disclosure of any information or items designated in this action as  
28 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” the

1 Receiving Party must so notify the Designating Party in writing immediately and in no event  
2 more than seven court days after receiving the subpoena or order. Such notification must  
3 include a copy of the subpoena or court order.

4 The Receiving Party also must inform in writing within a reasonable period of time the  
5 Party who caused the subpoena or order to issue in the other litigation that some or all the  
6 material covered by the subpoena or order is the subject of this Protective Order. In addition,  
7 the Receiving Party must deliver a copy of this Protective Order promptly to the Party in the  
8 other action that caused the subpoena or order to issue.

9 The purpose of imposing these duties is to alert the interested parties to the existence of  
10 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
11 protect its confidentiality interests in the court from which the subpoena or order issued. The  
12 Designating Party shall bear the burdens and the expenses of seeking protection in that court of  
13 its confidential material – and nothing in these provisions should be construed as authorizing or  
14 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

## 15 **9. Unauthorized Disclosure of Protected Material**

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
17 Material to any person or in any circumstance not authorized under this Protective Order, the  
18 Receiving Party must immediately (a) notify in writing the Designating Party of the  
19 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,  
20 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms  
21 of this Order, and (d) request such person or persons to execute the “Agreement to Be Bound by  
22 Protective Order” that is attached hereto as Exhibit A.

## 23 **10. Filing Protected Material**

24 Without written permission from the Designating Party or a Court order secured after  
25 appropriate notice to all interested persons, a Party may not file in the public record in this  
26 action any Protected Material. A Party that seeks to file under seal any Protected Material must  
27 comply with Local Rule 10-5.

See order issued  
concurrently herewith  
regarding filing procedures

1      **11. Final Disposition**

2      Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
3      after the final termination of this action, each Receiving Party must return all Protected Material  
4      to the Producing Party or destroy it. As used in this subdivision, "all Protected Material"  
5      includes all copies, abstracts, compilations, summaries or any other form of reproducing or  
6      capturing any of the Protected Material. Whether the Protected Material is returned or  
7      destroyed, the Receiving Party must submit a written certification to the Producing Party (and,  
8      if not the same person or entity, to the Designating Party) by the sixty-day deadline that  
9      identifies (by category, where appropriate) all the Protected Material that was returned or  
10     destroyed and that affirms that the Receiving Party has not retained any copies, abstracts,  
11     compilations, summaries or other forms of reproducing or capturing any of the Protected  
12     Material.

13     Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
14     pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work  
15     product, even if such materials contain Protected Material. Any such archival copies that  
16     contain or constitute Protected Material remain subject to this Protective Order as set forth in  
17     Section 4 (DURATION), above.

18      **12. Miscellaneous**

19      12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to  
20      seek its modification by the Court in the future.

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1           12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective  
2 Order no Party waives any right it otherwise would have to object to disclosing or producing  
3 any information or item on any ground not addressed in this Protective Order. Similarly, no  
4 Party waives any right to object on any ground to use in evidence of any of the material covered  
5 by this Protective Order.

6 **IT IS SO ORDERED.**

7 Dated: March 15, 2018

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9 United States Magistrate Judge

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EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

3 I, \_\_\_\_\_ [print or type full name], declare  
4 under penalty of perjury that I have read in its entirety and understand the Protective Order that  
5 was issued by the United States District Court for the District of Nevada on \_\_\_\_\_,  
6 2018, in *Garcia, et al. v. Service Employees International Union, et al.*, Case No. 2:17-cv-  
7 01340-APG-NJK, and *Mancini, et al. v. Service Employees International Union, et al.*, Case  
8 No. 2:17-cv-02137-APG-NJK. I agree to comply with and to be bound by all the terms of this  
9 Protective Order and I understand and acknowledge that failure to so comply could expose me  
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
11 disclose in any manner any information or item that is subject to this Protective Order to any  
12 person or entity except in strict compliance with the provisions of this Order.

13 Date: \_\_\_\_\_

14 City and State where signed: \_\_\_\_\_

15 Printed name: \_\_\_\_\_

16 Signature: \_\_\_\_\_